The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper 3

By:

Trial Section Merits Panel

Board of Patent Appeals and Interferences

U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450 703-308-9797

703-305-0942 Fax:

Filed: April 6, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

> WEI-WEI ZHANG and JACK ROTH

Junior Party, **Application 08/222,285** PAT. & T.M. OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES

٧.

GENCELL S.A. (Michel Perricaudet, Emmanuelle Vigne and Patrice Yeh)

> Senior Party, Application 08/397,225

Patent Interference No. 104,828 (CAS)

Before: SCHAFER, TORCZON and SPIEGEL, Administrative Patent Judges.

SPIEGEL, Administrative Patent Judge.

JUDGMENT -- RULE 662

This interference was declared with four (4) counts (Paper 1, p. 5). As a result of the (a) decision on Gencell preliminary motion 1 (Paper 81) and reconsideration thereof

(Paper 87), (b) entry of amended Perricaudet '225 claims 1, 2 and 11 (Paper 82), (c) decision on remaining motions (Paper 96), it was determined that there is no interference-in-fact between the subject matter of the claims designated as corresponding to Count 3, i.e, between the subject matter of Zhang claims 1-10, 31-32 and 34-51 and the subject matter of Perricaudet '225 claim 42 (Paper 96, pp. 24-28).

The interference was redeclared with three (3) Counts. Count 1 remained the same. Counts 2 and 4 were replaced by Counts 5 and 6. [Paper 97.]

Senior party Gencell/Perricaudet conceded the subject matter of Count 1 (Paper 96, p. 9; Paper 97, p. 2). Therefore, judgment was to be awarded against Gencell/Perricaudet in due course (Paper 97, p. 2).

"Pursuant to 37 C.F.R. § 1.662(a), party Zhang hereby abandons the contest as to Count 5 ... and Count 6" (Paper 102). Accordingly, it is

ORDERED that judgment on priority

- (a) as to Count 1 is awarded against senior party MICHEL PERRICAUDET, EMMANUELLE VIGNE and PATRICE YEH (GENCELL); and,
- (b) as to Counts 5 and 6 is awarded against junior party WEI-WEI ZHANG and JACK ROTH (Paper 97, pp. 2-4).

FURTHER ORDERED that senior party MICHEL PERRICAUDET,
EMMANUELLE VIGNE and PATRICE YEH (GENCELL) is not entitled to a patent
containing claims 1-3, 9, 12-18, 28, 30, 35 and 40-41 (corresponding to Count 1) of
application 08/397,225, filed March 28, 1995.

FURTHER ORDERED that junior party WEI-WEI ZHANG and JACK ROTH is

not entitled to a patent containing claims 17-23 (corresponding to Counts 5 and 6) of application 08/222,285, filed April 4, 1994.

FURTHER ORDERED that a copy of this paper shall be made of record in the files of U.S. application 08/333,680 and U.S. application 08/258,416.

FURTHER ORDERED that a copy of the decision on motions filed January 30, 2004 (Paper 96) shall be made of record in the files of U.S. application 08/222,285 and U.S. application 08/397,225.

FURTHER ORDERED that if there is a settlement agreement which has not been filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

RICHARD E. SCHAFER Administrative Patent Judge

RICHARD TORCZON

Administrative Patent Judge

APPEALS AND INTERFERENCES

BOARD OF PATENT

CAROL A. SPIEGEL

Administrative Patent Judge

Paper 103 Page 4

cc (via fax and first class mail):

Zhang (real party in interest: Board of Regents, University of Texas System)

Steven L. Highlander, Esq.
Charles P. Landrum, Esq.
David L. Parker, Esq.
FULBRIGHT & JAWORSKI, LLP
2400 One American Center
600 Congress Avenue
Austin, Texas 78701

e-mail: shighlander@fulbright.com

clandrum@fulbright.com dparker@fulbright.com

tel: 512-536-3184 (Highlander)

512-536-5674 (Landrum) 512-536-3055 (Parker)

fax: 512-536-4598

Aventis/Perricaudet (real party in interest Gencell SA subsidiary of AVENTIS PHARMA, S.A.):

Rochelle K. Seide, Esq. James J. Maune, Esq. BAKER BOTTS LLP 30 Rockefeller Plaza, 44th Floor New York, NY 10012-4498

Tel: 212-408-2626 Fax: 212-408-2501